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of Massachusetts

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Office of Campaign and Political Finance

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INTERPRETIVE BULLETIN

Use of the Internet and E-mail for Political Campaign Purposes

This office is frequently asked about the extent to which the Internet and e-mail may be utilized by candidates, political committees or other persons in connection with elections occurring in Massachusetts. The Internet and e-mail allow candidates and committees to reach potential voters or contributors at relatively little expense, and in recent years there has been a surge in the political use of the Internet and e-mail. A number of questions have arisen regarding expenditures that may be made for Internet access, the services that may be provided to candidates or committees to help them establish websites, the use of links to campaign websites, and access to government websites and e-mail networks. This bulletin does not address the use of credit cards and the Internet to receive contributions. For guidance regarding credit card contributions, see OCPF Memorandum M-04-01 and 970 CMR 1.09.

This bulletin does not, and could not, attempt to anticipate every question that may arise. **Candidates or other persons who have questions not specifically addressed by this bulletin should contact OCPF for advice.**

THE INTERNET

I. Website Development and Maintenance

OCPF has issued a number of opinions regarding the payment for and receipt of web development and maintenance services. Some of the issues addressed include whether campaign funds may be used to pay for website development, whether candidates and committees may contract with business corporations for web development or hosting, whether candidates or political committees must consider the receipt of personal services provided by individuals working on their own time to develop political or campaign websites as “contributions,” and whether public resources can be used to help a legislator update a private constituent services website.

A. Committee Expenditures

Candidates and committees may make expenditures from their political accounts to design, implement and/or maintain a website. A candidate may make such an expenditure whether a website is intended to keep constituents informed of legislative activities, or is intended to be used for campaign purposes, or both. See AO-97-06.

B. Corporate Involvement

Candidates and political committees (with the exception of ballot question committees) may not receive anything of value from a business or professional corporation, including an in-kind contribution of web development or hosting services or a discount or rebate for such service that is not available to the general public. See M.G.L. c. 55, § 8. If a candidate or committee's web site is developed or hosted by a business corporation, the candidate or committee must pay the fair market value for the provision of the corporation's web services.

C. Personal Services

M.G.L. c. 55, § 1 defines the term "contribution" to exclude the uncompensated "rendering of personal services" to a candidate or committee, or payments incidental to providing personal services that are made by those rendering personal services. Therefore, candidates and committees may accept an individual's voluntary "personal services" to administer a website. Such services and the incidental expenses related to the rendering of such services are not contributions within the meaning of the statute and, therefore, need not be listed on a campaign finance report.

For example, a person who uses his own computer to assist a campaign or who provides a personal service to a candidate by designing or administering a website, and is not otherwise compensated by another individual or entity¹ for the time spent while doing this activity, is providing a personal service, not a "contribution." See M.G.L. c. 55, § 1. An individual may also provide personal services to design a website that promotes a number of candidates or committees. See AO-04-11 and AO-04-14. Such a website may be developed after consultation with the candidates and committees being supported and may be used to facilitate the making of contributions to the candidates and committees.

Costs incurred by an individual to engage in political speech on the Internet may be considered payments incidental to providing personal services. It is this Office's opinion that Internet activities by individuals on their own time intended to influence a Massachusetts election with incidental use of equipment, software, Internet services, web hosting services, or domain names that he or she provides or otherwise owns should generally not be considered "contributions" or expenditures" for the purposes of the Massachusetts campaign finance law.

¹ If the person receives compensation from a third party for the time spent developing or administering the website, i.e. the person does the work at his or her place of employment during working hours or is otherwise paid by another to do this work, the individual or entity compensating such individual would be making a contribution to the campaign. Such an entity may not be a corporation; as noted in Section I. B., business or professional corporations are prohibited from contributing any money or other thing of value to any candidate or political committee other than a ballot question committee. See M.G.L. c. 55, §§ 8 and 22.

D. Use of Public Resources

The campaign finance law prohibits the use of public resources for a political purpose. See Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979). Public resources include the time of public employees during the workday. A legislator's State House staff may, however, update information regarding the legislator's State House activities, bills filed, and issues of interest to the legislator, on a legislator's private constituent service website. This activity serves a governmental purpose and the participation of public employees during the workday in updating such a website to include this information would be consistent with the campaign finance law and the Anderson decision. See GL-04-07.

II. Web Page Links

OCPF has considered questions regarding whether a governmental entity such as a municipality may post links on its website to candidate or committee websites. In addition, questions have arisen regarding whether corporations, federal committees or other groups or associations may post links on their websites to candidate or committee websites.

A. Candidate or Committee Links on Government Sites

In Anderson, the Supreme Judicial Court concluded that a municipality could not appropriate or use municipal funds or use other municipal resources to influence an election. The court concluded, however, that a municipality or other governmental entity could, under limited circumstances, make certain public resources available to private groups for election-related activities, such as a meeting room at town hall provided that "equal access," upon request, must be afforded to any other group on the same terms regardless of the group's point of view.

Consequently, a governmental entity may, for the purpose of promoting voter education and participation, provide links on its website to candidate or committee websites if equal access is provided for all other candidates or committees. OCPF has advised, however, that a disclaimer should be included on the governmental website stating that: (1) the links to candidate sites are provided by the candidates and that neither the URL (Web address) nor the site have been reviewed for content or accuracy; (2) the links are displayed for voter information purposes and the municipality, by posting the links, is not attempting to influence the nomination or election of any candidate or committee; (3) the candidate or committee websites are not monitored or regulated by the municipality; and (4) the links are available to any candidate or committee. See AO-96-04, AO-99-14, and AO-01-29. A governmental website, other than a restricted website as discussed below, may provide a link to a candidate or committee website even if the candidate or committee website contains campaign material, i.e., it solicits contributions, votes or volunteers.

A governmental entity may also refuse to post a link or may remove a link once it is posted if it is done in accordance with an approved policy that ensures that all persons and groups, regardless of political view, have equal access (or equal lack of access) to the website and are treated uniformly. See AO-00-15.

B. Incumbents' Links on Restricted Government Sites

Alternatively, a governmental entity may decide to limit the provision of links on an official website to incumbent candidate's websites. Under these circumstances, since equal access is not provided to other candidates for the same offices, the content of the links and linked websites is restricted, as noted in the next paragraph. Where there is a link from the governmental site to an incumbent candidate's website, there should be a disclaimer advising readers that they will be leaving the official website if they click the link. See AO-01-05.

In AO-01-05, this office advised that a link from a legislator's web page on the General Court website to the legislator's private website is permissible only if the text of the link and the web address do not advocate a particular vote for or against a candidate *and* the content of the private website is limited to providing information for constituents, not campaign related material. In plain terms, the legislator's private site cannot solicit political contributions, votes or volunteers, or contain any express advocacy supporting or opposing any candidate, party or ballot question if it will be linked to the General Court's official website. Nor would it be appropriate for the legislator to provide a *further* link from a constituent information page that can be accessed from the legislator's official site, to a page that solicits such contributions, votes or campaign volunteers. See AO-01-05.

C. Candidate or Committee Links on Corporate Sites

Candidates and political committees (with the exception of ballot question committees) may not receive anything of value, including an in-kind contribution of services, from a business or professional corporation. See M.G.L. c. 55, § 8. A link to a candidate or political committee's website (other than a ballot question committee's website), from the website of a business or professional corporation, would raise issues under M.G.L. c. 55, § 8 and should be avoided absent guidance from OCPF.

Alternatively, a corporation or other commercial entity that normally sells space on its website, website banners, or links for a market rate fee may provide space, a banner, or a link to a candidate or committee, provided the candidate or committee pays the fair market value for the space, banner or link.

D. Candidate or Committee Links on Other Sites

1. Federal Political Action Committee (PAC) Sites

A federal PAC may post a link to a state candidate or committee's website on its website. The inclusion of such a link does not constitute a "thing of value," within the meaning of M.G.L. c. 55, § 1. The state candidate or committee, however, must reimburse the federal PAC for any administrative costs stemming from the posting of the link, regardless of how minimal they may be, in order to avoid the receipt of an in-kind contribution from the federal PAC. See AO-02-22.

2. State or Local Political Action Committee (PAC) Sites

A state or local PAC may post a link to a state candidate or committee's website on its website. The inclusion of such a link does not constitute a "thing of value," within the meaning of M.G.L. c. 55, § 1. The candidate or committee is, therefore, not required to report the link as a contribution from the state or local PAC.

Contributions made to a candidate or committee through a link from a state or local PAC may be subject to the bundling provisions of the campaign finance law if the PAC either physically receives contributions that are then forwarded to a candidate, or provides information to a candidate indicating that the PAC arranged for the making of the contributions. See M.G.L. c. 55, § 10A, which states, in part, that such bundled contributions made to a candidate count toward the PAC's annual campaign contribution limit of \$500 to a candidate in addition to counting toward the actual contributor's limit.

3. Individuals' Sites

A person who provides a link from his personal website to a candidate or committee website is providing a personal service, not a "contribution." Consequently, there is no reporting requirement for the link provided.

E-MAIL

OCPF has responded to numerous inquiries regarding the use of e-mail for political purposes. Generally, the concerns addressed involve whether a political committee has received a "contribution" as a result of e-mailed correspondence, or, if public resources are involved, whether such activity is inconsistent with the Anderson opinion, or M.G.L. c. 55, §§13 or 14.

I. Contribution Issues

A. Personal Services

If a person, on his own time and using his own personal computer, volunteers to send e-mails supporting a candidate or ballot question, he is providing a personal service. As such, he is not making a contribution to a candidate or committee. See AO-01-07.

B. E-Mail Lists

Lists of e-mail addresses may be considered items of value depending on the source of the list. If a committee or candidate purchases or otherwise receives a mailing list or membership list from a person or entity that ordinarily receives compensation for the preparation or sale of such lists, the committee or candidate must report an expenditure or the receipt of an in-kind contribution. See AO-01-07. If, however, an individual who is not in the business of compiling such lists creates an e-mail list using his own contacts (personal e-mail address book), and provides the list to a candidate or committee, such activity would involve the provision of a personal service. Therefore, it would not be considered a contribution, unless an entity other than the candidate or committee compensates the person for the preparation and use of the list.

C. Membership Organization E-mail Lists

If a group, other than a corporation subject to the restrictions in M.G.L. c. 55, § 8, qualifies as a "membership organization" within the meaning of M.G.L. c. 55, § 1, communications via e-mail from the membership organization to its members and their families on any subject shall not be deemed to be a contribution or expenditure as defined in M.G.L. c. 55, § 1. See AO-00-05 and OCPF Memorandum M-98-04.

II. Public Resource and M.G.L. c. 55, §§ 13 and 14 Issues

A. Public Resources

Although a governmental entity may post information regarding a ballot question on its website, it may not use e-mail to proactively distribute such information to voters or a subset of voters except in response to a specific request for information. See AO-99-06.

Similarly, access to an e-mail network or list created or provided by a governmental entity is a public resource. For example, a principal or teacher may generally not use a school's e-mail access to send e-mails supporting or opposing a particular candidate or ballot question.

B. Solicitations in Public Buildings

Section 14 states that "no person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for [political campaign purposes]."

If a person sends or forwards a solicitation via e-mail to a public employee at the employee's place of work, i.e. to an e-mail account provided by a governmental entity in conjunction with that individual's employment and which is generally accessed from a computer located in a government building, such action is not consistent with Section 14. See AO-01-20. Consequently, a campaign may not keep any contributions received as a result of such an e-mail.

If a solicitation is improperly sent to a public employee at the employee's place of work in a government building, the recipient may, however, advise the sender of a private e-mail address or other address to which the solicitation may be sent instead.

C. Solicitations by Public Employees

Section 13 states that "[n]o person employed for compensation, other than an elected officer; by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever..."

Public employees may not, consistent with Section 13, be involved in any way in directly or indirectly soliciting campaign contributions. Public employees must, to ensure compliance with Section 13, refrain from any activity that indicates support for the fundraising efforts of a candidate or political committee or for other political purposes. See IB-92-01. In the context of e-mail communications, a public employee may not send or forward any e-mail, whether from a personal or governmental account, that contains political solicitations, i.e. requests for campaign contributions.

In addition, a public employee should refrain from providing a political committee with an e-mail list, i.e. his personal e-mail address book or an e-mail list compiled at his workplace, or to, in any other way, assist a political committee in determining who would receive an e-mail solicitation from the political committee since such activity would be considered an indirect solicitation from the public employee. See AO-02-29.

If you have any questions or need further information regarding the application of the campaign finance law to Internet or e-mail issues please do not hesitate to contact OCPF. This is a developing area and it is expected that additional advisory opinions will be issued to respond to new questions as they arise.

A handwritten signature in cursive script, reading "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line that extends downwards from the end of the signature.

Michael J. Sullivan
Director